WP(C) 3155/2001
BEFORE
HON'BLE MR. JUSTICE B. K.SHARMA

Heard Mr. T.J. Mahanta, learned counsel for the petitioner as well as Mr. N. Borah, learned CGSC appearing for the respondents.

By means of this writ petition, the petitioner has put to challenge the order dated nil of December, 1999 (Annexure-6) by which he was removed from service pursuant to a departmental proceeding. The order of removal from service was affirmed by the appellate authority vide Annexure-7 order dated 03.08.2000.

The petitioner while was serving as L/NK in the Group Centre, CRPF, Guwahati was issued with memorandum of charge sheet on 16.02.99 levelling the following charges:

Article-I

That No. 810712867 Lance Naik B.C. Nath of Group Centre, CRPF, Guwahati committed an act of misconduct in his capacity as a member of the Force U/S 11 (1) of CRPF Act, 1949, in that he demanded bribe of Rs. 5,000/- from Shri Md. Amil Haque, selected as Constable (GD) in CRPF, and accepted Rs. 1000/- as part payment thereof on 05.01.1999.

Article-II

That the aforesaid No. 810712867 Lance Naik B.C. Nath of Group Centre, CRPF, Guwahati while functioning in the aforesaid office, committed an act of misconduct in his capacity as a member of the Force U/S 11(1) of CRPF Act 1949, in that he kept such official document/papers in his possession at his residence which he was not supposed to keep.

The statement of imputation of misconduct in respect of the said Articles of charges is reflected below:

Article-I

That No. 810712867 L/NK B.C. Nath of Group Centre, CRPF, Guwahati was functioning in this Group Centre as L/NK from 22.09.98. He was working as assistant to recruitment clerk in the main office of GC CRPF Guwahati. Shri Md. Amil Haque, S/o Shri Shahaddin Sheikh, on his selection as Constable (GD), reported in this GC on 28.12.98. While completing the formalities with regard to documentation of the said candidate, L/NK B.C. Nath apprised him that his original documents were missing from his dossiers and hence there is a snag in clearing his appointment. He further impressed upon the candidate that he will set-right the issue if he will make payment of Rs. 5,000/-, otherwise his selection will stand cancelled. The said candidate was not having the required amount with him. However, he shelled out Rs. 1000/- which he placed on the wash-basin of gent's toilet in GC Office Conference Hall, on the instructions of L/NK B.C. Nath, from where the latter book it. He further kept pestering the above candidate, i.e. Md. Amil Haque, for payment of balance amount of Rs. 4,000/- while the candidate was unable to pay up, and subsequently the said candidate Md. Amil Haque reported the matter in roll-call on 06.01.99, when BHM asked the new recruits as to whether any of them had any problems. Thus No. 810712867 L/NK B.C. Nath committed an act of misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949, which is prejudicial to the good order and discipline of the Force.

Article-II

That the aforesaid No. 810712867 Lance Naik B.C. Nath, while functioning in the

aforesaid capacity in Group Centre, CRPF, Guwahati, accepted bribe of Rs. 1000/- from Md. Amil Haque, a candidate for appointment as Constable (GD) and persisted for payment of Rs. 4,000/- more. On 06.01.99, during roll-call, BHM HC Gurudavar Singh enquired from the new recruits if they had any problems, the said candidate Md. Amil Haque came up with the grievance that L/NK B.C. Nath is insisting for payment of money in terms of bribe for completing/ setting right is documentation. On receipt of this information, the matter was reported to Commandant of this Group Centre. Subsequently on the instructions of Commandant GC CRPF Guwahati, a search party comprising of SI (Adm) SI M.K. Singh, HC (BHM) Gurdavar Singh, HC (CHM) S.N. Ghosh, HC(QMC) Ram Eqbal, Constables Rudrappa, B.K. Borah, and Mahila Constables M. Dass & S. Dass, was detailed to conduct search of the residence of the said L/NK B.C. Nath at Quarter No. 139 (Type-I Special) allotted to No. 901210422 CT U.K. Pati of GC CRPF Guwahati, where the former was sharing accommodation with the latter. During search on 07.01.99, the party found following documents/official papers from the said residence as per details given below:

a) Letter No. R. II 1/98 Estt- V dated 24.11.98 addressed to Debeswar Sonawal, S/o. Tukheswar Sonawal, calling him to appear for selection test on 02.01.99.

b) Letter No. R. II-1/98 Estt. V dated 24.11.98 addressed to Nirud Baruah, S/o. Late Upen Baruah calling him to appear for selection test on 02.01.99.

Thus the aforesaid L/NK B.C. Nath committed an act of misconduct in his capacity as member of the Force under section 11(1) of the CRPF Act, 1949 which is prejudicial to the good order and discipline of the Force.

Alongwith the charge sheet apart from said statement of imputation of misconduct, the list of documents and witnesses were also enclosed. In response to the said charge sheet, the petitioner submitted his written statement of defence. Being not satisfied with the defence plea, the disciplinary authority decided to proceed wit the matter and accordingly enquiry was conducted. On conclusion of the enquiry, the Enquiry Officer submitted his report on 06.11.99 holding the petitioner guilty of both the charges. The petitioner was given opportunity to make representation against the enquiry report and thereafter the disciplinary authority passed the aforesaid impugned order of removal from service upheld by the appellate authority. Being aggrieved, the petitioner has filed the instant writ petition.

The respondents have filed their counter affidavit denying the contentions raised in the writ petition. According to the respondents in the enquiry the petitioner was given full opportunity of being heard. It has been stated that since the enquiry was conducted in a fair manner and in absence of procedural irregularities in conducting the enquiry, the contentions raised in the writ petition are not tenable in law.

According to the petitioner, if the evidences on record are properly appreciated, the charges against the petitioner cannot be said to have been established. Reacting to the penalty of removal from service, it has been contended that having regard to the gravity of charges stated to have been established, same is grossly disproportionate.

I have perused the entire materials on record including the departmental proceeding file. Mr. Borah, learned C.G.S.C. has drawn my attention to the statements of the petitioner made during the enquiry proceeding in which he clearly admitted the charges of obtaining Rs. 1000/- from the complainant as bribe. It is true that the amount was subsequently returned to the complainant, but that by itself cannot absolve the petitioner from the charge levelled against him. Apart from the own admission of the petitioner, the witnesses examined also unequivocally stated about the demand of bribe by the petitioner. So far as the charge No. 2 is concerned, it is an admitted position that two call letters were recover

ed from the possession of the petitioner. It will have to be borne in mind that the petitioner being a member of the disciplined force, the kind of conduct reflected in both the charges was unbecoming. It was in such a situation, the authority taking into account the entire evidences on record imposed the penalty of removal from service which was also upheld by the appellate authority.

Needless to say that the writ court exercising the power of judicial review under Article 226 of the Constitution of India cannot sit on appeal over the findings arrived at by the authorities and reappreciate the evidence on record. Apart from the statements of the witnesses relating to the charges, the petitioner himself admitted his guilt while replying to the question No. 24 put to him about keeping an amount of Rs. 1000/- out of his free will. To another question (Question No. 26), his reply was that he had kept the money till the day on which he returned the same to the complainant on the face of the charge levelled against him. As regards the claim of returning the money to the complainant, the petitioner in the enquiry proceeding stated that he did not inform about the same to any one, including the superior authority. When the petitioner was asked whether by such conduct he had committed a wrong, the petitioner admitted the same. As regards the charge No. 2, it will have to be borne in mind that the petitioner was in charge of despatching the call letters. In his defence, he had pleaded that although the call letters had been dispatched, but later on he found the same lying on the particular place and accordingly took the same to his quarter for despatching the same on the next day. Such a plea has been found to be untenable and rightly so by the enquiry officer and the disciplinary authority. By not sending the call letters, the petitioner deprived two probable candidates from appearing in the selection in question.

For all the aforesaid reasons the enquiry officer submitted the report holding that both the charges against the petitioner have been established and in consideration of the said report the disciplinary authority imposed the penalty of removal from service. Having regard to the gravity of the misconduct, the disciplinary authority having imposed the particular penalty, it will not be appropriate for the writ court to substitute the same by a lesser penalty. It will be beyond the ambit, scope and jurisdiction of the writ court exercising the power of judicial review under Article 226 of the Constitution of India.

For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed.